IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2785 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ND DAWDA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR MD PANDYA for Respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/10/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court by way of the present petition under Article 226 of the Constitution of India for the protection of his fundamental rights under Articles 14 and 16 of the Constitution of India.

2. The petitioner first entered into service with

the respondent Board as Lineman on 18th July 1959. In course of time he was promoted from time to time and was last holding the post of Junior Engineer.

3. There is no controversy that at the time of appointment of the petitioner the date of birth recorded in the service book was 3rd December 1936. However, the petitioner gave an application to the Superintending Engineer on 24th August 1963 for correction of his birth date as entered in his service book, and to alter the same from 3rd December 1936 to 8th October 1938.

4. There is no controversy that the original entry in the service book made at the point of time when the petitioner joined the service of the respondent board was based upon the date of birth as shown in the school leaving certificate. There is also no controversy that the date as shown in the school leaving certificate is 3rd December 1936. However, as aforesaid, the application made by the petitioner for correction of his birth date to 8th October 1938 was on the basis that the birth date shown in the school leaving certificate was incorrect, that the correct birth date was 8th October 1938, and this application was supported by two documents viz. (i) a certificate issued by JMFC, Liliya-Lathi dated 27th June 1958 and (ii) a certificate issued by the Sarpanch of Sukhpur Gram Panchayat dated 24th June 1958.

5. There is no dispute that the Superintending Engineer of the Circle looked into the aforesaid documents and passed an order to correct the date of birth of the petitioner from 3rd December 1936 to 8th October 1938, and accordingly a correction was made in the service book of the petitioner. The Superintending Engineer derived his power to look into the aspect of correction of his birth date and the consequential correction in the service book by virtue of General Standing Order No.16 dated 22nd November 1960 (Annexure-A). As aforesaid, the correction of the birth date and the consequential correction in the service book was made by the order of the Superintending Engineer dated 3rd January 1964 (Annexure-B).

6. Since that date viz. 3rd January 1964, the date of birth shown in the service book of the petitioner continued to have effect for almost 33 years. Thereafter apparently the second respondent (holding the post at the relevant point of time) passed an order dated 2nd April 1997 whereby the date of birth was again changed, reversed, and accordingly corrected in the service book of the petitioner, from 8th October 1938 back to 3rd

December 1936. It is vehemently contended by the petitioner that this order was an exparte order and behind the back of the petitioner, and without affording any opportunity of hearing (Annexure-C). Consequent to the said order and consequent to the second correction in the date of birth in the service book of the petitioner, the petitioner was superannuated with effect from 2nd April 1997 on the basis that the corrected date of birth of the petitioner was 3rd December 1936. It is pertinent to note that the fact that this was an exparte order and behind the back of the petitioner and without giving an opportunity of hearing is not disputed. This was the position when the petitioner approached this court by way of the present petition. However, during the pendency of the petition, and possibly on account of this substantial contention raised by the petitioner, an ex-post facto hearing was given to the petitioner resulting in an order passed by the Secretary of the respondent Board dated 16th June 1998 (Page 20 of the compilation). This order ultimately upholds the order of the Superintending Engineer dated 2nd April 1997, whereby the petitioner's date of birth as entered in the service book is reversed from 8th October 1938 to 3rd December 1936.

7. Learned counsel for the petitioner has sought to rely upon the service regulations in order to challenge this power to reverse an entry once corrected.

8. Reliance is placed on behalf of the petitioner on Service Regulation No.16 (page 32), which really speaking has no application to the facts of the case. Regulation No.16 is merely an enabling provision for fixing the date of birth as 1st July of a particular year where the exact date and month of the birth of the employee is not known.

9. On behalf of the petitioner reliance is also placed upon Service Regulation No.18, which permits a correction in the date of birth subject to production of satisfactory proof and documentary evidence, with a limitation that a correction should not be made or permitted if the employee has completed 50 years of age. On the facts of the case admittedly the age bar does not come into play. However, a plain reading of Regulation No.18 discloses that it is merely an enabling provision, which is primarily for the benefit of the employee. Such an employee may produce appropriate documentary evidence sufficient to satisfy the appropriate authority, and on such satisfaction being achieved, this regulation only permits the correction of the date of birth. However, what the petitioner submits in the context of this regulation is that once the power under Regulation No.18

has been exercised in favour of an employee, this Regulation does not and cannot permit reopening of the issue at the instance of the Board to the prejudice of the employee.

10. This submission made on behalf of the petitioner cannot be justified on a mere reading of the said Regulation. As aforesaid, the plain meaning and object of the said Regulation is for the benefit of the employee and only enables an appropriate correction in the date of birth to be made subject to the satisfaction of the appropriate authority. This, however, cannot possibly lead to an inference that once a correction has been made, even if it is in favour of the employee,another correction in order to set right a mistake made earlier, is either expressly barred or barred by necessary implication. It is obvious that when an employer exercises any power in respect of an employee or pertaining to an employee, such power may either be expressly conferred by a statute (in the instant case the Service Regulations) or it may be an administrative power which any employer may utilise in respect of an employee. As aforesaid, Regulation No.18 cannot and does not prevent or bar the respondent Board as an employer from exercising a power to correct what may be a possible mistake committed earlier. It must therefore be found that the contention raised by the petitioner that a correction as to the birth date once made in favour of an employee cannot be reopened, is not a contention which can be sustained.

11. Learned counsel for the respondent has pointed out that on account of numerous cases arising in respect of numerous employees of the respondent board, it was necessary to issue a Circular dated 22nd July 1996. It may be pointed out that this Circular, although not appropriately placed on record of the petition, has been given to the court for perusal and is therefore referred to herein. This Circular has been issued in the background of various factual contingencies which have arisen which are referred to in para 1 thereof. This Circular first notices a fact situation which is discovered while checking personal files of employees that a true copy of the school leaving certificate/SSC certificate is not available, and in such cases the Circular requires the true copy of such certificates may be called from such employees. This Circular also requires that if any discrepancy is found in the birth date recorded in the service book with the school leaving certificate, such cases must be reported to the head office immediately.

12. Certain specific conclusions can be drawn from the Circular. Firstly the Circular justifies the verification of the personal records of the employee, and when necessary, to check the birth date as found from the service book against school leaving certificate/SSC certificate. However, this does not and cannot possibly be interpreted to mean that where the birth date entered in the service book does not tally with the school leaving certificate or the SSC certificate, the date appearing in the school leaving certificate must prevail and that in every case, the date appearing in the service book shall be struck off or corrected so as to tally with the birth date shown in the school leaving certificate. This Circular cannot be interpreted to mean that the birth date appearing on the SSLC/SSC certificate shall be conclusive and irrefutable proof of the correct date. Thus, this submission made on behalf of the respondent must be negatived. This Circular also cannot possibly be interpreted to mean, as suggested by the respondent, that the birth date appearing in the School Leaving Certificate/SSC Certificate is necessarily final, and that the service book should be altered or corrected so that the date of birth is shown as per the date of birth shown in the SSC/SSLC book. In fact the very scope and purport of the said Circular is only to complete the gaps or missing data in the personal files of the employees and to eliminate discrepancies as to birth dates shown in the service book by comparison with the birth dates shown in the SSC/SSLC certificate. It could well be, as is found in the present case, that what was first entered in the service book (as the birth date) was in fact the date appearing in the school leaving certificate, was not the correct date. It is, therefore, obvious that the date first shown in the service book i.e. the birth date shown in the school leaving certificate, could be corrected in the service book of the employee, obviously upon supplying adequate documentary evidence to the satisfaction of the competent authority. On the facts of the case this exercise was successfully conducted by the employee resulting in the order of the Superintending Engineer dated 3rd January 1965 (Annexure-B).

13. The question for consideration in the present petition necessarily requires the court to examine the validity of the order which reverses the situation on a question of fact. Obviously the order which reversed the date of birth in the service book of the petitioner (Annexure-C) is not a speaking order and does not in any manner give the smallest possible reason for reversal of the earlier decision taken by the competent authority.

14. However, as aforesaid, this order at Annexure-C was admittedly an exparte order without hearing the petitioner, which is sought to be rectified by giving the petitioner an ex-post facto hearing, resulting in the order dated 16th June 1998 passed by the Secretary of the respondent Board (page 20).

15. Thus, ultimately the question before this Court is as to whether the said order which is a speaking order is justified and legally sustainable on the face of it. Unfortunately this Court is obliged to observe that this order passed by a senior functionary such as the Secretary of the respondent Board is sadly lacking in conviction.

16. This order shall hereinafter be referred to as the impugned order (although the same is not specifically and identifiably challenged in the petition since it was passed during the pendency of the petition). The impugned order specifically notes that the petitioner had produced in support of his claim a certificate dated 27th June 1958 issued by the JMFC, and a certificate dated 24th June 1958 issued by the Sarpanch of Sukhpur Gram Panchayat. The impugned order further notes that the petitioner had produced a certificate dated 4th June 1997, issued by the Branch Manager, LIC, Rajkot city branch.

17. The impugned order does not focus on the documents produced by the petitioner before the authority, but focuses its attention only on other documents collected by or through the authority which heard the petitioner, and which documents were only shown to the petitioner during the course of hearing. It may be noted that this was evidence collected by or through the authority hearing the petitioner, and obviously such documents collected by the authority was evidence collected behind the back of the petitioner. The impugned order also shows on the face of it that these documents were merely shown to the petitioner during the course of the hearing. It would be safe to say that this is hardly a way of conducting an appropriate and impartial inquiry particularly where the authority is hearing the petitioner with a view to support the reversal of an earlier entry made in favour of the petitioner. However, we need not dilate at length on this aspect of the matter inasmuch as these documents were at least shown to the petitioner during the course of the hearing. Even so, the substance of these documents upon which the authority relies is of no

consequence whatsoever. Items 1 to 5 mentioned in paragraph (c) of the impugned order are only letters i.e. correspondence. Unfortunately the authority has recorded, as a statement of fact, what at first sight amounts to an admission on the part of the petitioner (page 22). However, on a careful perusal it is obvious that the petitioner has admitted without any objection "that his date of birth is 3.12.1936 as per the school leaving certificate". It is obvious and it is also common ground on both the sides that the date of birth as shown in the school leaving certificate is actually 3.12.1936. It is precisely this date which was initially entered in the service book, which according to the petitioner was a wrong date, and which the petitioner successfully got corrected through the appropriate order so as to show the correct date of birth as October 8, 1938. Unfortunately, the impugned order makes much of the fact that all the documents gathered by the Authority show the date of birth of the petitioner as stated in the school leaving certificate. The authority apparently lost focus on the fact that it is precisely the date which is entered in the school leaving certificate which was incorrect, and which was corrected by the petitioner through appropriate orders of the appropriate authority. Thus, the fact that 3rd December 1936 is shown as the date of birth in the school leaving certificate is not in itself irrebutable proof that it is the correct date of birth.

17.1 Furthermore, the Authority conducting the ex-post facto hearing obviously erred in relying upon documents collected by itself, when those documents were not before the officer who passed the order at Annexure-C. This is an obvious attempt to justify the validity of an exparte order.

18. The impugned order casually dismisses the certificate issued by the JMFC, Liliya-Lathi, apparently because the said certificate is issued on the basis of the affidavit of the elder brother of the petitioner. To my mind, the authority deciding this issue (of the petitioner) was not an authority empowered to look into the validity of the certificate issued by the JMFC or to refuse to accept it as good evidence, because it was issued on the basis of an affidavit of the elder brother, merely because the certificate of the JMFC did not meet with the approval of the authority.

19. The impugned order also completely misreads and misinterprets the certificate issued by the Sarpanch of Sukhpur Gram Panchayat dated 24th June 1958.

Unfortunately this certificate has been discredited by a totally erroneous and tangential approach. This certificate is not officially produced on the record of the present petition, but I have looked into it since a xerox copy has been supplied. This certificate specifically states that Narsidas Dahyabhai Davda was born on 8th October 1938, that his birth was here (at the village), and that this certificate is issued by inspecting the Register of Births and Deaths maintained by the office of the Revenue Patel. However, this certificate has been grossly and erroneously misinterpreted by the Secretary of the respondent Board in the impugned order, by assuming that it was "issued on the basis of old revenue records". Thus, the authority misdirected itself and caused inquiries to be made with the District Record Office, Jamnagar as well as Mamlatdar, Jamjodhpur and found that no revenue record was available. However, what is relevant and must be noted is that according to the said office such records were "not available", which did not in any manner militate against the contents of the certificate issued by the Sarpanch of the village Panchayat. Merely because the authority has apparently recorded that no such record is presently available, would not and cannot enable the authority to presume that such records did not exist when the certificate was issued almost 30 years ago.

20. Under the circumstances, the net result of the inquiry and the finding thereof which could legitimately follow, is only that the records which were sought to be obtained by the authority were not available, and that because the authority could not refer to such records for the purpose of verifying the certificate issued by the Sarpanch 30 years ago, the authority has chosen to disbelieve the certificate. Obviously this view, if upheld, would amount to a perversity in law.

21. It must be clarified that this court is not sitting in judgement or in appeal over the evidentiary value of the various documents referred to and relied upon by the respective parties. This Court is merely concerned with and has in fact only dealt with the validity of the impugned order in its aspect of "the decision making process". Once it is found that the approach and the appreciation (in law) of the evidentiary material on the part of the authority is grossly erroneous and unsustainable in law, it must be declared to be illegal, bad in law and of no effect. In fact it is so found and declared.

22. The consequence of the above discussion and

finding would be that the order at page 20, upholding the order of the Superintending Engineer at Annexure-C and the consequential order at Annexure-D are quashed and set aside. What necessarily follows is that the petitioner would have been and is found to have been entitled to remain in service upto the age of 60 years counting his date of birth as 8th October 1938. However, since he has already been retired on 2nd April 1997, instead of being due for retirement on 31st October 1998, he is entitled to the pay and allowances in respect of the said period. In case any increment had become due during this period, such increment shall also be taken into account for the purpose of recomputing the salary due, the pension and retiral benefits payable to the petitioner.

23. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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